

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

JOSEPH L. McCOY,

Petitioner

VS.

STEPHEN UPTON, WARDEN,

Respondent

**NO. 5: 05-CV-88 (DF)**

**PROCEEDINGS UNDER 28 U.S.C. § 2254  
BEFORE THE U. S. MAGISTRATE JUDGE**

**RECOMMENDATION OF DISMISSAL**

On May 12, 2005, the respondent in the above-captioned case filed a MOTION TO DISMISS AS UNTIMELY. Tab #6. Thereafter, on May 13, 2005, the undersigned advised petitioner of said motion and his duty to respond properly thereto. Petitioner was further advised that failure to respond within twenty (20) days would result in a recommendation of dismissal. Tab #8. The petitioner has **failed to respond** to the court's order.

Accordingly, IT IS RECOMMENDED that the petitioner's petition for a writ of habeas corpus be **DISMISSED** for failure to respond to the court's order. Further, IT IS RECOMMENDED that the respondent's MOTION TO DISMISS AS UNTIMELY (Tab #6) be **GRANTED** as uncontested. Pursuant to 28 U.S.C. §636(b)(1) the parties may serve and file written objections to this RECOMMENDATION with the district judge to whom the case is assigned **WITHIN TEN (10) DAYS** after being served with a copy thereof. The clerk is directed to serve the plaintiff with a copy of this recommendation by mailing it to the LAST ADDRESS provided by him.

SO RECOMMENDED, this 5<sup>th</sup> day of OCTOBER, 2005.



A handwritten signature in blue ink, reading "Claude W. Hicks, Jr.".

CLAUDE W. HICKS, JR.  
UNITED STATES MAGISTRATE JUDGE